

Attorney Docket No.: 01CON314P
Serial No.: 09/499,999

REMARKS

In the *final* Office Action, dated January 30, 2004, the Examiner has rejected claims 16-27, 45, 48 and 49. Reconsideration and allowance of pending claims 16-27, 45, 48 and 49 in view of the following remarks are respectfully requested.

A. Claim Objections

The Examiner has objected to claim 27 as being shown as “original” and also listed as “cancelled”. Applicant has corrected the list of claims to show claim 27 as “original” and removed claim 27 from the list of cancelled claims. As the Examiner has assumed correctly, claim 27 is pending in the present application.

B. Rejection of Claims 16, 18-21 and 45 Under 35 USC § 103(a)

The Examiner has rejected claims 16, 18-21 and 45 under 35 USC § 103(a) as being unpatentable over Ashley (USPN 6,104,993) (“Ashley”) in view of Otani (USPN 6,400,693) (“Otani”). Applicant respectfully disagrees.

Claim 16 recites in part: “selecting one of said installed plurality of speech encoders according to said data rate, said installed plurality of speech encoders including at least a first encoder using a first speech encoding scheme and a second encoder using a second speech encoding scheme different from said first speech encoding scheme, wherein said first encoder is a fixed bit-rate encoder incapable of rate determination; and encoding said one of said speech signal frames using said one of said plurality of speech encoders; wherein said determining, selecting and encoding steps are repeated so as to encode said speech signal frame-by-frame”.

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Applicant respectfully submits that the limitation "wherein said first encoder is a fixed bit-rate encoder incapable of rate determination" of claim 16 is not disclosed, taught or suggested by either Otani or Ashley. As described in the background section of the present application, today, a fixed bit-rate encoder, such as G.711, G.726 and G.723.1, can be selected by network providers according to the time of the day, etc. and, as a result, every frame of the speech signal is encoded at a fixed bit-rate using the same coding scheme of the selected encoder. According to the conventional wisdom with respect to the fixed bit-rate encoders, there is no need to analyze and classify the speech signal, since the bit-rate of the selected encoder is fixed and cannot be changed.

Furthermore, conventionally, network providers may also select a variable bit-rate encoder, such as EVRC (or Enhanced Variable Rate Codec) having variable rates of 8.5K, 6.0K, 2.0K and 0.8K according the time of the day or other criteria; however, once such encoder has been selected for a certain period of time, the frame-by-frame encoding is performed using the same encoding scheme, albeit the encoder is a variable bit-rate encoder and the rate may change from frame to frame, or even maintain the rate for a period of time, according to the speech analysis and classification. This is sharply different than applicant's claimed invention.

It is respectfully submitted that Otani does not add anything more than what applicant has described in the background section of the present application. In other words, the Examiner is merely relying on Otani to show that a network provider may select encoders using different encoding scheme for a particular period of time, but not for frame-by-frame processing. Applicant does not dispute that there are many different encoding schemes and that network providers may choose one or another based on certain criteria for specific periods of time; however, there is no suggestion in either Ashley or Otani for the desirability to use a different

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encoding scheme on a frame-by-frame basis and/or that one of the plurality of the encoders is a fixed bit-rate encoder. (See *In re Fitch*, 972 F.2d 1260 (Fed. Cir. 1992) ("The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification" (emphasis added)); see also *In re Chu*, 66 F.3d 292, 298 (Fed. Cir. 1995) (In a proper obviousness determination, "whether the changes from the prior art are 'minor', ... the changes must be evaluated in terms of the whole invention, including whether the prior art provides any teaching or suggestion to one of ordinary skill in the art to make the changes that would produce the patentee's ... device." (citations omitted.) This includes what could be characterized as simple changes, as in *In re Gordon*, 733 F.2d 900, 902, 221 U.S.P.Q. (BNA) 1125, 1127 (Fed. Cir. 1984) (Although a prior art device could have been turned upside down, that did not make the modification obvious unless the prior art fairly suggested the desirability of turning the device upside down). (emphasis added.))) It is respectfully submitted that the references cited by the Examiner do not suggest the desirability of creating the system of claim 16. Accordingly, applicant respectfully submits that claim 16 and its dependent claims 18-21 and 45 should be allowed.

C. Rejection of Claims 22-27 Under 35 USC § 103(a)

The Examiner has rejected claims 22-27 under 35 USC § 103(a) as being unpatentable over Ashley in view of Otani, and in further view of Stewart, et al. (USPN 5,761,634 ("Stewart")). Applicant respectfully disagrees.

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Applicant respectfully submits that claim 22 has limitations similar to those of claim 16, and claim 22 and its dependent claim 23-27 should be allowed at least for the same reasons stated above.

D. Rejection of Claim 17 Under 35 USC § 103(a)

The Examiner has rejected claim 17 under 35 USC § 103(a) as being unpatentable over Ashley in view of Otani, and in further view of Taumi et al. (USPN 6,006,178) ("Taumi"). Applicant respectfully disagrees.

Applicant respectfully submits that claim 17 depends from claim 16, and should be allowed at least for the same reasons stated above.

E. Rejection of Claims 48-49 Under 35 USC § 103(a)

The Examiner has rejected claims 48-49 under 35 USC § 103(a) as being unpatentable over Ashley in view of Otani, and in further view of DeJaco (USPN 5,911,128) ("DeJaco"). Applicant respectfully disagrees.

Applicant respectfully submits that claims 48-49 depends from claim 16, and should be allowed at least for the same reasons stated above.

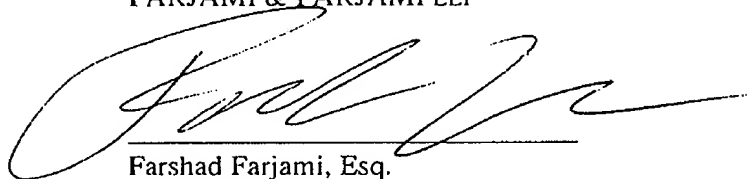
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F. Conclusion

For all the foregoing reasons, an early allowance of claims 16-27, 45, 48 and 49 pending in the present application is respectfully requested. The Examiner is invited to contact the undersigned for any questions.

Respectfully Submitted;
FARJAMI & FARJAMI LLP

Dated: 6/24/04



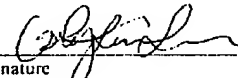
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